

From: Tony Lucio
To: Microsoft ATR
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Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Dear Ms. Hesse:

As a U.S. citizen and a consumer of Microsoft products, I wish to exercise my rights under the Tunney Act to comment on the Justice Department's proposed settlement with Microsoft.

It has come to my attention that under the proposed settlement non-profit vendors using Open Source software are shut out of the proposed settlement. Specifically, Section III (J)(2)(c) allows Microsoft to define who is and is not a "business" or commercial enterprise that Microsoft may or may not license its products to. Further, Section III(D) allows Microsoft to deny said vendors the information necessary to make their products compatible with Microsoft software. On the surface this may seem like a reasonable remedy. But I assure you it is not, for the following reasons:

Open Source is not a giveaway of technology. Each and every Open Source vendor has the right to develop and market and copyright its own version of an Open Source protocol. The particular protocol cannot be infringed without violating the law and the original source code itself remains open to the public at large as an incentive for development. A great many vendors have accepted this formula and developed successful line of products utilizing source codes such as Linux, FreeBSD, Apache and Perl, to name a few. Each vendor has capitalized on the availability of Open Source to create its own unique and protected product. Without the availability of the Open Source code these products would not exist today. They have created consumer choice and innovation in the limited arenas of Server and Operating Systems by freeing these markets up with competition.

Microsoft, on the other hand, has a proven track record of seeking to stifle competition by threatening, among other things, to withhold licenses from vendors who consider marketing lines of products that include a Microsoft competitor's software. Considering a history of anti-trust behavior such as this, Microsoft cannot be allowed to determine who is and is not a commercial vendor that it may share its licenses and product authorizations with. To do so would allow Microsoft to define who its future competition will be by legally withholding from a new class of non-licensees technical information vital to the development of products and services compatible with Microsoft products, effectively killing off those businesses, as Microsoft already possess 90% of the current market in operating systems and software applications and a sizeable share of the server and network-level applications markets as well. Ultimately consumers would suffer as choice becomes narrower and narrower, leaving Microsoft the only developer on the playing field. Allowing an anti-trust violator to determine who their competition will be is akin to allowing a burglar to pick and choose his victims.

I hope the government will seriously consider the issues I have raised here and reject the proposed settlement language I described above, and continue to reject any language which allows Microsoft to determine who is entitled to share the marketplace with them and how they will share it. Software and hardware development, at both the business and consumer levels, needs innovation in order to survive. New products cannot be developed unless designers and producers can integrate those products into a larger marketplace, a marketplace which almost exclusively uses Microsoft systems.

Until the day arises when Microsoft no longer dominates the software world with a 90% market share they must be made to make available to all vendors the tools necessary not only for their own survival but to insure future innovation and development of new technologies and services. Any settlement which requires less than this is simply not in the public interest.

Thank you for allowing me to comment.

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To verify my identity, please contact me via e-mail or post. For my own security I never divulge my home address or phone number over the Internet. Thank you for understanding.

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